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**Cc:** Reilly, Katherine (EOIR); McHenry, James (EOIR); Santoro, Christopher A (EOIR)  
**Subject:** Case Law Bulletin (Week of January 8, 2018)  
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### In Focus

#### Supreme Court of the United States

[Pereira v. Sessions](#), 866 F.3d 1 (1st Cir. 2017), cert. granted, 2018 WL 386567 (Jan. 12, 2018) (No. 17-459)

The Supreme Court granted the petition for a writ of certiorari to review whether, to trigger the "stop-time rule" under section 240A(d)(1) of the Act by serving a "notice to appear," the government must "specify" the items listed in the definition of a notice to appear, including "[t]he time and place at which the proceedings will be held."

#### First Circuit

[United States v. Steed](#), No. 17-1011, 2018 WL 387775 (1st Cir. Jan. 12, 2018) (COV)

The First Circuit affirmed the district court's judgment, concluding that N.Y. Penal Law § 160.10(2)(a) (second-degree robbery) (and thereby, petitioner's conviction in violation of attempted second-degree robbery) does not qualify as a crime of violence under the force clause of U.S.S.G. § 4B1.2(a)(1) (same as 18 U.S.C. § 16(a)).

#### Second Circuit

[Gayle v. Sessions](#), No. 16-3953-ag, 2018 WL 341736 (2d Cir. Jan. 10, 2018) (unpublished) (CIMT)

The Second Circuit denied the PFR, concluding that a conviction under N.Y. Penal Law § 120.20 (reckless endangerment in the second degree) categorically constitutes a CIMT because the statute requires both recklessness and an aggravated circumstance. The court noted that while the Board relied on *Matter of Silva-*

Trevino, 26 I&N Dec. 826 (BIA 2016), in reaching the same outcome, it did not follow the required categorical approach in determining whether the offense is a CIMT. Nevertheless, the categorical approach did not yield a different outcome in this case.

#### Third Circuit

[Almanza v. Att'y Gen. of U.S.](#), No. 17-1854, 2018 WL 343749 (3d Cir. Jan. 10, 2018) (unpublished) (Agg Fel)

The Third Circuit denied the PFR, concluding that the petitioner was ineligible for cancellation of removal because his conviction in violation of N.J. Stat. Ann. § 2C:14-2c(4) (sexual assault of a minor) categorically qualifies as sexual abuse of a minor, and thus, a sexual abuse of a minor aggravated felony under section 101(a)(43)(A) of the Act. In doing so, the court employed the modified categorical approach because the statute of conviction has multiple alternative elements.

#### Ninth Circuit

[Gomez-Velazco v. Sessions](#), Nos. 14-71747, 14-73303, 2018 WL 343752 (9th Cir. Jan. 10, 2018) (Section 238 Proceedings)

The Ninth Circuit denied the PFR, concluding that under the circumstances of this case involving administrative removal under section 238(b) of the Act, petitioner was required to show prejudice in order to prevail on his due process claim. The court further held that although petitioner “may have been improperly denied the right to counsel during his initial interaction with DHS officers, he has made no showing that the denial of that right caused him any prejudice.” The court reasoned that the automatic reversal rule in *Montes-Lopez v. Holder*, 694 F.3d 1085 (9th Cir. 2012), does not extend to this case.

[Zheng v. Sessions](#), No. 14-70936, 2018 WL 359520 (9th Cir. Jan. 11, 2018) (unpublished) (MTR)

The Ninth Circuit granted the PFR and remanded, concluding that the Board abused its discretion in affirming the IJ’s decision that denied petitioner’s motion to reopen because the IJ erred by not considering petitioner’s putative evidence of changed country conditions with regard to enforcement of China’s coercive family-planning policies.

[Li v. Sessions](#), No. 14-73807, 2018 WL 387370 (9th Cir. Jan. 12, 2018) (unpublished) (Asylum-PP)

The Ninth Circuit granted the PFR and remanded, concluding that petitioner’s credible testimony establishing that he was “arrested, beaten, detained and threatened because of his political opinion expressed through leading protests at government office buildings” compels the conclusion that he suffered persecution and the police officers who beat him were motivated to persecute him because of his actual or implied political beliefs. Therefore, the court reversed the agency’s conclusions that petitioner’s

political opinion was not one central reason for his persecution and held that petitioner was entitled to a presumption of well-founded fear of future persecution.